

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:13-CR-00360 HEA
)
RODNEY FRANKS,)
)
Defendant.)

PLEA HEARING

BEFORE THE HONORABLE HENRY E. AUTREY
UNITED STATES DISTRICT JUDGE

DECEMBER 11, 2013

APPEARANCES:

For Plaintiff: Patrick T. Judge, Sr., Esq.
OFFICE OF U.S. ATTORNEY
111 South Tenth Street, 20th Floor
St. Louis, MO 63102

For Defendant: Peter M. Cohen, Esq.
2734 Lafayette
St. Louis, MO 63104

REPORTED BY: ANGELA K. DALEY, CSR, RMR, FCRR, CRR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102
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PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

(PROCEEDINGS STARTED AT 10:30 A.M.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
THE DEFENDANT PRESENT.)

THE COURT: Good morning, all. This is the matter of United States of America versus Rodney Franks, case number 4:13-CR-360 HEA. This matter is now before the Court on notice of change of plea, and the parties have provided to the Court a document entitled Plea Agreement, which consists of 12 pages. Let the record further reflect that the defendant is now present in open court with counsel, Mr. Peter Cohen, and the Government is present through Mr. Patrick Judge, whom I believe is standing in for Cris Stevens. Is that correct, Mr. Judge?

MR. JUDGE: That is correct, Judge.

THE COURT: Are the parties ready to proceed?

MR. COHEN: Yes, sir.

MR. JUDGE: Yes, Judge.

THE COURT: Any objection to Mr. Judge standing in for Mr. Stevens, Mr. Cohen?

MR. COHEN: No, Your Honor.

THE COURT: All right. Will you swear in the defendant.

(DEFENDANT SWORN BY THE CLERK.)

THE COURT: Would you state your full name for the record please.

1 THE DEFENDANT: Rodney Dewitt Franks.

2 THE COURT: And, Mr. Franks, did you hear the
3 statement that I just made?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And is that a true and correct reason for
6 why we are here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Do you understand that before
9 I can accept your plea of guilty, there are some questions
10 that I have to ask you to be sure your plea is valid. So as
11 we go through this proceeding, if I say something and you
12 don't understand me, let me know and I will repeat it or I
13 will rephrase it. If I say something and you don't hear me,
14 let me know that as well and I will speak louder, and if you
15 need to talk to your lawyer at any time, let me know that,
16 too, and I will give you that opportunity, all right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Also, keep in mind that you have taken an
19 oath to answer all these questions here today truthfully, and
20 your failure to do that could cause the Government to come
21 back against you with a new indictment for perjury, okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Any questions about any of that?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. How old are you, Mr. Franks?

1 THE DEFENDANT: Twenty-six.

2 THE COURT: How far in school have you gone?

3 THE DEFENDANT: Ninth grade.

4 THE COURT: Okay. Do you have your GED?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Very good. Do you have any
7 difficulty hearing?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you have any difficulty speaking or
10 understanding English?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you taken any kind of medicine
13 before coming to court today that might keep you from
14 understanding what is going on in court today?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you used any alcohol or drugs before
17 coming to court today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you used any alcohol or drugs in the
20 last 36 hours?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you ever been diagnosed as having or
23 treated for having any type of mental illness or mental
24 disease?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you ever taken or used any kind of
2 medication that is typically used for the treatment of mental
3 illness or mental disease?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What kind of medication?

6 THE DEFENDANT: Trazodone.

7 THE COURT: And why are you taking that?

8 THE DEFENDANT: When I first got locked up as a
9 juvenile. I can't remember, it's been so long.

10 THE COURT: Okay. When is the last time you took any
11 of that?

12 THE DEFENDANT: 2004.

13 THE COURT: Way back.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. How did it make you feel when
16 you were taking it?

17 THE DEFENDANT: Sleepy.

18 THE COURT: Do you feel better when you were taking
19 it or without taking it? It doesn't matter?

20 THE DEFENDANT: No, it don't matter.

21 THE COURT: Okay. How are you feeling today?

22 THE DEFENDANT: All right.

23 THE COURT: In your own words, tell me why you have
24 come to court today.

25 THE DEFENDANT: To plead out to this case, just get

1 it out of the way.

2 THE COURT: Okay. Do you know of any reason, Mr.
3 Cohen, why the Court should not conclude that your client is
4 competent to proceed?

5 MR. COHEN: No, Your Honor.

6 THE COURT: Mr. Judge?

7 MR. JUDGE: No, Judge.

8 THE COURT: Let the record reflect then that upon the
9 examination of the defendant and upon inquiry of counsel, the
10 Court concludes that the defendant is competent to proceed at
11 this time. Now, Mr. Franks, have you had enough time to go
12 over your case with your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you satisfied with the advice he has
15 given you in the case?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has he answered all of your questions
18 fully, completely, and to your satisfaction?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is there anything that you needed to know
21 or wanted to know about your case that you are still confused
22 about?

23 THE DEFENDANT: No, sir.

24 THE COURT: Is there anything about your case that
25 you still don't understand?

1 THE DEFENDANT: No, sir.

2 THE COURT: Were there any witnesses that you wanted
3 him to contact or that he should have contacted but did not
4 contact?

5 THE DEFENDANT: No, sir.

6 THE COURT: Was there any investigation that you
7 wanted him to do or that he should have done but he did not
8 do?

9 THE DEFENDANT: No, sir.

10 THE COURT: Was there any information that you wanted
11 him to get from the Government regarding your case or that he
12 should have gotten from the Government regarding your case
13 that he didn't get?

14 THE DEFENDANT: No, sir.

15 THE COURT: Was there anything at all that you wanted
16 your lawyer to do for you in this case that he has failed to
17 do or refused to do in your behalf?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any complaints against him as
20 your attorney?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you fully satisfied with all the work
23 that he has done for you in the case?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And do you understand that

1 when you plead guilty today, your case will be over with, and
2 it means you are giving up your right to a trial by jury?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that the Constitution
5 and laws of this nation guarantees you the right to have your
6 case decided by a jury of 12 impartial citizens?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And did you talk about all that with your
9 lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And as a result of that discussion with
12 your lawyer, have you now concluded that, in fact, what you
13 want to do is to give up your right to a trial by jury and
14 plead guilty in this case here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Very well. Do you understand
17 though, Mr. Franks, that if you did go to trial, you would be
18 presumed innocent, and it would be the obligation of the
19 Government to prove you guilty beyond a reasonable doubt by
20 competent evidence?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that you would not be
23 required to present any kind of evidence to prove yourself
24 innocent?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you also understand that if you were
2 to go to trial in this case, you would have the right to
3 confront any and all witnesses that the Government might have
4 against you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you would, therefore, be able to
7 cross-examine those witnesses as they testified in open court,
8 under oath, and in front of a jury?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You also understand that you'd be able to
11 then object to any and all evidence that the Government might
12 attempt to introduce against you at the trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And if you wanted to put on some evidence
15 in your own defense, you could, but there is no requirement
16 that you put on anything?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. You also understand that if
19 you were to go to trial, you would have the right to testify
20 or not testify; it would be your choice?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you understand further that if you
23 decided that you did not want to testify in the case, the fact
24 that you did not testify could not be used against you in any
25 way by anyone for any purpose?

1 THE DEFENDANT: Yes, sir.

2 THE WITNESS: All right. And you further understand,
3 Mr. Franks, that when you plead guilty here today, if I accept
4 your plea of guilty, I will enter a judgment finding you
5 guilty beyond a reasonable doubt, and I will impose a sentence
6 on some future date?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand in that regard that
9 whatever sentence I impose is entirely up to me?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you understand that that's true
12 even though you may have an agreement between yourself and the
13 Government on things that relate to sentencing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. And finally, do you
16 understand that when you plead guilty here today, it means you
17 are giving up your right to not incriminate yourself under the
18 Fifth Amendment of the Constitution because you will have to
19 admit the facts that establish a basis for the crime and admit
20 the crime itself?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is that what you want to do today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Now in relation to those
25 crimes, those charges, that bring you here today, Mr. Franks,

1 have you had the opportunity to review and talk about the
2 indictment with your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And as a result of that review and
5 discussion, are you satisfied that you understand everything
6 in the indictment?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about anything
9 in the indictment?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you also aware of the range of
12 punishment that applies to those charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And did you talk about that
15 with your lawyer as well?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Any questions about that?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. For the record, Mr. Judge,
20 what is the range of punishment?

21 MR. JUDGE: Judge, the range of punishment is
22 imprisonment of not more than ten years, a fine of not more
23 than \$250,000, a term of supervised release of not more than
24 three years, a special assessment that must be imposed of
25 \$100. In the event the defendant was to be determined to be a

1 armed career criminal, his range of punishment would be
2 pursuant to Title 18, 924(e), and as such, it would be
3 imprisonment of not less than 15 years and not more than life,
4 a fine of not more than \$250,000, a term of supervised release
5 of not more than five years, and a special assessment would
6 have to be imposed which would be \$100.

7 THE COURT: Did you hear everything that Mr. Judge
8 just said?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did any of that come as a surprise to
11 you just now?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Very well. Is anyone forcing
14 you to plead guilty today, Mr. Franks?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anyone threatened you in any manner
17 in order to get you to plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has anyone promised you anything in
20 exchange for your plea of guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone made any threats against any
23 close friends or family members in order to get you to plead
24 guilty today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have any of your friends or family
2 members threatened you or otherwise coerced you to plead
3 guilty today for some reason?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you then pleading guilty voluntarily
6 and of your own free will because that's what you want to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. In relation to your plea of
9 guilty, I made a reference to the plea agreement when we
10 started, the document, and the last page of that document
11 shows your name printed out with a signature above that
12 printed name. Is that your signature?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And before you signed the document, did
15 you review it and talk about it with your lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And as a result of that discussion, are
18 you satisfied that you understand everything in this document?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions about it?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. To be sure we all have the
23 same understanding about this document, I'm going to have
24 Mr. Judge tell us what the substance of it is as it relates to
25 the rights and obligations of the parties and then I will have

1 some more questions for you, okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Judge.

4 MR. JUDGE: Judge, in exchange for the defendant's
5 plea of guilty in this case, the Government is agreeing that
6 no further prosecution will be brought in this district
7 relative to the defendant's actions which led to the charges
8 outlined in the indictment for an offense that occurred on
9 August 6, 2013 of which the Government is presently aware.
10 Additionally, Judge, the defendant agrees to forfeit any
11 property that was seized from him during the course of the
12 investigation that led to the charges outlined in the
13 indictment. The parties do agree that the defendant's base
14 offense level will be determined by Guideline Section 2K2.1A.
15 The exact base offense level is not known at this point
16 because that is affected by criminal history which has not yet
17 been finally determined as well as the characteristics of the
18 firearm.

19 In the event the defendant is an armed career
20 criminal, the guideline section applicable in this case would
21 be Guideline Section 4B1.4, and as such, you know, both
22 parties understand that his guideline section would be
23 dramatically increased -- his range of punishment would be
24 dramatically increased if he was an armed career criminal
25 under Guideline Section 4B1.4, and his criminal history score

1 would be as high as a level -- would be a level 6.

2 Additionally, Judge, the parties agree that two levels should
3 be added to the defendant's base offense level pursuant to
4 2K2.1(b)(4)(A) because the firearm was stolen, and the parties
5 do agree that the defendant should get -- or because the
6 defendant's plea of guilty in this case, he has accepted
7 responsibility and should get the appropriate -- and,
8 therefore, is eligible for the appropriate reductions pursuant
9 to Guideline Section 3E1.1.

10 The defendant does agree that he will waive
11 non-sentencing issues as well as sentencing issues. And with
12 respect to the sentencing issues, he will waive his appeal as
13 long as the Court sentences the defendant within the
14 applicable guideline range or below that guideline range. The
15 Government would waive its sentencing issue -- its right to
16 appeal sentencing issues if the Court were to sentence the
17 defendant within that range or above that range. Defendant
18 does give up his habeas corpus rights, his post conviction
19 type appeals, whether that be pursuant to Title 28, U.S.C.
20 2255 or some other type habeas corpus appeal. The defendant
21 does give up all rights to records including records pursuant
22 to the Freedom of Information Act as well as any other records
23 that may be available to him by right of statute, regulation,
24 or case law.

25 Judge, that in sum and substance is the agreement in

1 this case as it relates to the defendant's sentence and the
2 plea bargain that occurred in this case.

3 THE COURT: Very well. Did you hear all of that that
4 Mr. Judge just said?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And did any of that come as a surprise to
7 you?

8 THE DEFENDANT: No, sir.

9 THE COURT: And does his statement reflect everything
10 that you understood about the plea agreement?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 MR. COHEN: Your Honor, the only thing I would add to
14 that is both parties have reserved in the agreement to appeal
15 any criminal history determinations if there is any objection
16 to the criminal history.

17 THE COURT: All right.

18 MR. COHEN: I don't know if he said that.

19 MR. JUDGE: No, I didn't, and that is accurate.

20 Additionally, with respect to his habeas corpus rights, he is
21 waiving that appeal unless he alleges a claim of ineffective
22 assistance of counsel or prosecutorial misconduct.

23 THE COURT: Very well. You agree with all that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. The Court will then approve

1 of the plea agreement as outlined on the record. Considering
2 all those things, Mr. Franks, has anybody given you any
3 prediction or promise as to exactly what your sentence is
4 going to be from me?

5 THE DEFENDANT: No, sir.

6 THE COURT: And again, you understand whatever it is,
7 it is entirely up to me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And knowing that, do you still want to go
10 forward with your plea?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Tell us, Mr. Judge, if you
13 would please, what the evidence would have been if the matter
14 had gone to trial that would establish a factual basis for the
15 charge, the relevant conduct of the defendant, and a basis
16 upon which one might conclude defendant guilty beyond a
17 reasonable doubt?

18 MR. JUDGE: Judge, on August 6, 2013 in the city of
19 St. Louis within the Eastern District of Missouri, the
20 defendant having been convicted previously of a felony crime
21 punishable by a term of imprisonment exceeding one year
22 knowingly possessed a firearm which travelled in interstate or
23 foreign commerce during or prior to being in the defendant's
24 possession.

25 On August 6, 2013, a reliable confidential source

1 provided information to Detective Craig Sayer and Jon Long of
2 the St. Louis Metropolitan Police Department. According to
3 the source, defendant and his associates were arming
4 themselves to retaliate for a shooting that occurred earlier
5 that day. The source stated that defendant was driving a
6 green Pontiac G6 in the 5400 block of Genevieve and provided
7 an accurate physical description of the defendant. The
8 detectives responded to the 5400 block of Genevieve in
9 St. Louis City within the Eastern District of Missouri. There
10 they were observed -- there the officers, the detectives,
11 observed defendant seated in a green Pontiac G6. When the
12 defendant drove away, the detectives followed. The detectives
13 followed the defendant until they observed him commit a
14 traffic violation on Interstate 70.

15 The detectives curbed the green Pontiac in the 4600
16 block of Goodfellow in the city of St. Louis within the
17 Eastern District of Missouri. The detectives asked defendant
18 to exit the green Pontiac and the defendant did so. When the
19 defendant exited the vehicle, the detectives observed in plain
20 view a handgun on the driver's seat. The handgun was
21 identified as a Glock .40 caliber semiautomatic pistol loaded
22 with 14 rounds in the magazine and one round in the chamber.
23 Defendant spontaneously stated he would rather be caught with
24 a gun than without one. The detectives advised the defendant
25 of his Miranda rights, and the defendant waived his rights.

1 The defendant admitted that there had been numerous shootings
2 in the area of which he and his associates had been targets,
3 and he was not going to let anyone shoot him on the street in
4 his neighborhood.

5 The pistol was submitted to the St. Louis
6 Metropolitan Police Department for analysis, and an expert
7 firearms examiner determined that the Glock .40 caliber
8 semiautomatic pistol was manufactured in Austria, and,
9 therefore, it was transported across state lines and in
10 interstate and foreign commerce. The pistol was test fired
11 and functioned as a firearm and is, in fact, a firearm under
12 federal law.

13 A review of the defendant's criminal history revealed
14 that he previously was convicted of assault of a law
15 enforcement officer, two counts, armed criminal action, six
16 counts, assault first degree, three counts, and robbery first
17 degree in 2004. Each of the defendant's prior convictions is
18 a felony crime punishable by a term of imprisonment exceeding
19 one year. Defendant and the Government agree that the facts
20 set forth above are true and may be considered relevant
21 conduct pursuant to Guideline Section 1B1.3.

22 THE COURT: Did you hear all those facts as stated by
23 Mr. Judge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And are all those facts true and correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Do you then agree and admit
3 that you've been previously convicted of a crime punishable by
4 imprisonment for a term exceeding one year?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you also agree and admit that
7 thereafter, you knowingly possessed a firearm?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you finally agree and admit that
10 that firearm had been transported across a state line at some
11 time during or before your possession of it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How do you plead to the charge?

14 THE DEFENDANT: Guilty.

15 THE COURT: Do you know of any reason, legal or
16 otherwise, Mr. Cohen, why the Court should not accept your
17 client's plea of guilty?

18 MR. COHEN: No, Your Honor.

19 THE COURT: Mr. Judge?

20 MR. JUDGE: No, Judge.

21 THE COURT: Let the record then reflect that the
22 Court will enter its order and findings that the defendant is
23 entering his plea of guilty knowingly, voluntarily, and of his
24 own free will with full understanding of the nature and
25 consequences of his plea, and furthermore, that he is

1 knowingly and voluntarily waiving his right to a trial by jury
2 and all rights incident thereto, further finding that the
3 defendant is fully cognizant of the range of punishment
4 applicable to the charge. The Court accepts the defendant's
5 plea of guilty and enters its judgment finding the defendant
6 guilty beyond a reasonable doubt. A presentence investigation
7 report will be ordered, and sentencing will be set for
8 March 10th at 10:45 a.m.

9 MR. COHEN: Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Cohen.

11 MR. JUDGE: Thank you, Judge.

12 THE COURT: Thank you, Mr. Judge. We will see you
13 back on March the 10th, Mr. Franks, all right?

14 **(PROCEEDINGS CONCLUDED AT 10:47 A.M.)**
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CERTIFICATE

I, Angela K. Daley, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 21 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 24th day of March, 2015.

/S/Angela K. Daley
Angela K. Daley, CSR, RMR, FCRR, CRR
Official Court Reporter